

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MELISSA FERRICK, et al.,

Plaintiff,

vs.

SPOTIFY USA INC., et al.,

Defendants.

No. 1:16-cv-08412 (AJN)

CORRECTED

**DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND MOTION FOR ATTORNEYS' FEES AND PAYMENT OF LITIGATION
EXPENSES**

I, Steven G. Sklaver, declare as follows:

1. I submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Class Counsel's Motion for Attorneys' Fees in conjunction with the settlement among Plaintiffs Melissa Ferrick individually and doing business as Nine Two One Music and Right on Records/Publishing ("Ferrick"), Jaco Pastorius, Inc. ("Pastorius"), and Gerencia 360 Publishing, Inc. ("G360") (collectively "Class Plaintiffs" or "Plaintiffs"), for themselves and on behalf of the proposed Settlement Class, and Defendant Spotify USA Inc. ("Spotify" or "Defendant").

2. I am a partner in the law firm of Susman Godfrey L.L.P., which, along with Gradstein & Marzano, P.C., is interim co-lead counsel ("Class Counsel") for Class Plaintiffs in Civil Action No. 1:16-cv-08412 (AJN). I have been admitted *pro hac vice* by this Court in this action and am a member of good standing of the California bar. I have personal, first-hand

knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. Susman Godfrey L.L.P. and Gradstein & Marzano P.C. have significant experience with copyright litigation and class actions, including settlements thereof. A copy of Susman Godfrey L.L.P.'s class action profile was attached to my June 26, 2017 Declaration in support of Preliminary Approval as Exhibit A, Dkt. 176-1. A copy of Gradstein & Marzano P.C.'s firm profile was attached to my June 26, 2017 Declaration in support of Preliminary Approval as Exhibit B, Dkt. 176-2. The lawyers working on this case for the Class are experienced lawyers who have substantial experience prosecuting large-scale class actions and life settlement litigation.

4. Since filing the initial Complaint, Class Counsel have made significant efforts to prepare the case and reach the outstanding Settlement, as detailed below. Six different Susman Godfrey attorneys—myself, Los Angeles partner Marc Seltzer, Los Angeles partner Kalpana Srinivasan, Seattle partner Stephen E. Morrissey, Los Angeles associate Krysta Kauble Pachman, and New York associate Geng Chen—have devoted time to the case. Five different Gradstein & Marzano, P.C. attorneys – former associate Daniel Lifschitz, former partner Harvey Geller, partner Henry Gradstein, partner Maryann Marzano, and associate Matt Slater – have also devoted time to the case.

5. Susman Godfrey L.L.P. and Gradstein & Marzano P.C.'s efforts on behalf of the Class included, but are not limited to, the following:

- Conducted an initial investigation of this case to develop the theories and facts that formed the basis of the allegations in the complaint, and compiled evidence for, and filed, the Consolidated Class Action Complaint (“CCAC”). Dkt. No. 75.
- Defended the CCAC from Spotify's motion to dismiss, and conducted jurisdictional discovery in connection with that effort. Dkt. No. 96.

- Defended the CCAC from Spotify's motion to strike class allegations, both in the Central District of California, Dkt. No. 98, and in this Court, Dkt. No. 153.
- Collected documents from Class Plaintiffs in anticipation of Spotify's discovery requests and drafted initial disclosures (which would have been served absent the Settlement).
- Prepared discovery requests for Spotify and two third parties, Harry Fox Agency and the NMPA, and participated in multiple meet and confers with these entities.
- Reviewed and analyzed documents and data produced by Spotify under Federal Rule of Evidence 403 for the purposes of settlement, and worked closely with experts to assess the value of the Class's claims.
- Attended two full day, in-person mediation sessions in California conducted by a highly experienced mediator, preceded by mediation briefing. All sessions were attended by counsel for Spotify, counsel for Class Plaintiffs, as well as a representative from Spotify. The terms of the Settlement were also negotiated in extensive in-person meetings, telephone calls, and email discussions over the course of several months. A long-form settlement agreement was heavily negotiated thereafter, with the parties participating in telephonic mediation sessions with and submitting mediation briefs to Judge Phillips over disputed terms and issues.
- Obtained the excellent result for the class, as described in the Preliminary Approval Memorandum and supporting papers.

6. I was among the principal negotiators of the proposed class action settlement with Defendants. The mediation process began in September 2016. The parties signed a confidential term sheet on January 11, 2017, and the final Settlement Agreement was signed on May 26, 2017. A true and correct copy of the Settlement Agreement was attached as Exhibit C to my June 26, 2017 Declaration, Dkt. 176-3. It is the opinion of Class Counsel that this settlement and the distribution plan with Spotify are fair, adequate, and reasonable. All three lead Plaintiffs also support this settlement and believe it to be fair, adequate, and reasonable.

7. In my opinion, consistent with the analysis of multiple experts, an overall settlement value of \$112.55 million adequately compensates the members of the proposed Settlement Class for their damages in view of the risks of litigation. The overall value includes

monetary relief in the amount of \$49.45 million in cash payments by Spotify, including a \$43.45 million cash payment, \$5 million payment of attorneys' fees that Spotify has agreed to pay for future monetary relief, and at least \$1 million in notice costs, Dkt. 170 ¶46.

8. The Settlement also includes substantial future monetary relief, including:

- Spotify will pay mechanical license royalties to Settlement Class Members who become Identified Royalty Claimants with respect to one or more Claimed Musical Works. Settlement Agreement ¶ 4.
- Spotify and Plaintiffs' Counsel will appoint members to a "Mechanical Licensing Committee" that would meet regularly to discuss and implement processes to increase the percentage of usage that can be matched and otherwise to facilitate the mechanical licensing of content on Spotify's service. *Id.* ¶ 6.
- Spotify will collaborate with other industry participants to improve the sharing of catalog and other data among publishers, labels, and online music services. *Id.* ¶ 7.
- Settlement Class Members may elect to conduct a Plenary Audit of mechanical license royalties paid to that Settlement Class Member under the Future Royalty Payments Program. *Id.* ¶ 5.
- Spotify will receive information about musical compositions on a catalog basis to facilitate the mechanical licensing of content that Spotify makes available for interactive streaming and/or limited downloading. *Id.* ¶ 8.

As detailed in the declaration of Joao Dos Santos, this future monetary relief is valued at an additional \$63.1 million. These future monetary guarantees provide substantial benefits to the Class that could not have been obtained even if the litigation had been successful. This Settlement represents an especially good result for the proposed Class because checks will be mailed automatically to eligible class members and none of the cash in the settlement fund will be returned to Defendants.

9. The Settlement Agreement is the result of extensive and protracted negotiations between the parties with the assistance of an experienced mediator, Hon. Layn R. Phillips,

United States District Judge (Retired). The mediation process began in September 2016 and did not conclude until the Settlement Agreement was signed.

10. The parties conducted two in-person mediation sessions with Judge Phillips that I or one of my partners at Susman Godfrey personally attended and actively participated in. These in-person mediations took place on November 7, 2016, and January 11, 2017, in Judge Phillips' offices in Newport Beach, California, and lasted all day. Both mediation sessions were attended by counsel for Spotify, counsel for Plaintiffs, and a corporate representative from Spotify. The parties also participated in extensive teleconference and email discussions with Judge Phillips.

11. The memorandum of understanding was negotiated in-person at Judge Phillips's offices in Newport Beach, California on January 11, 2017, during the second in-person mediation referenced above.

12. A long-form settlement agreement was heavily negotiated thereafter, with the parties participating in telephonic mediation sessions with and submitting mediation briefs to Judge Phillips.

13. Throughout the process, the settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length. The terms of the settlement were negotiated through extensive mediation briefing, teleconference and email discussions, and in-person meetings. Spotify informally provided extensive information to Class Counsel as part of the settlement negotiations, including as to the compositions at issue and data related to Spotify's streaming of those compositions. Class Counsel was well informed of material facts, and retained knowledgeable and experienced experts to develop a thorough understanding of the data and information provided by Spotify. The settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length beginning in September 2016.

The settlement negotiations lasted over six months. Class Counsel was well informed of material facts, and the negotiations were hard-fought and non-collusive.

14. The Settlement has received national media attention. *See, e.g.*, “Spotify Settles \$43 Million Class Action Copyright Lawsuit,” FORBES, June 1, 2017, available at: <https://www.forbes.com/sites/legalentertainment/2017/06/01/spotify-settles-43-million-class-action-copyright-lawsuit/#7d8d44ac1e3f>; Robert Levine, “What Will Spotify’s \$43 Million Class Action Settlement Mean for Songwriters and Publishers?” BILLBOARD, May 30, 2017, available at: <http://www.billboard.com/articles/business/7809818/spotify-43-million-class-action-settlement-songwriters-publishers-analysis>; Andrew Flanagan, “In \$43 Million Settlement, Spotify Forced to Confront a Persistent Problem,” NATIONAL PUBLIC RADIO, June 1, 2017, available at: <http://www.npr.org/sections/therecord/2017/06/01/531029555/in-43-million-settlement-spotify-forced-to-confront-a-persistent-problem>.

15. In March 2016, Spotify reached a settlement with the National Music Publishers Association (“NMPA”) totaling \$30 million to compensate publishers and songwriters for infringement of their mechanical licenses. Ed Christman, “Spotify and Publishing Group Reach \$30 Million Settlement Agreement Over Unpaid Royalties,” BILLBOARD, March 17, 2016, available at: <http://www.billboard.com/articles/business/7263747/spotify-nmpa-publishing-30-million-settlement-unpaid-royalties>. The \$112.55 million recovery is more than three times the NMPA settlement.

16. Class Counsel took steps to ensure that we had all the necessary information to advocate for a fair, adequate, and reasonable settlement that serves the best interests of the Settlement Class.

17. Class Counsel analyzed extensive documents produced by Spotify in accordance with the mediation and prepared substantial other discovery, including requests for production, interrogatories, and third party subpoenas to Harry Fox Agency and the National Music Publishers Association.

18. Class Counsel also analyzed all of the contested legal and factual issues posed by the litigation, as required to accurately evaluate Defendant's positions, advocate for a fair settlement that serves the best interests of the class, and make accurate demands of Defendant. Class Counsel briefed multiple substantive issues, including a motion to strike class action allegations and a motion to dismiss for lack of personal jurisdiction, or in the alternative, to transfer venue to the Southern District of New York.

19. Susman Godfrey L.L.P. and Gradstein & Marzano P.C. frequently take cases on a contingency basis. In cases like this one where the firm is advancing expenses, Class Counsel have standard contingency agreements, under which they receive 40% of the gross sum recovered by a settlement that is agreed upon, or other resolution that occurs, on or before the 60th day preceding any trial. Sophisticated parties and institutions have agreed to these standard market terms. The requested fee here of 14% of the overall settlement value or using a less-accepted and more conservative methodology, 25% of the cash fund, plus up to \$5 million in attorneys' fees Spotify agreed to pay in conjunction with the prospective relief provided by the Settlement. This is less than what Susman Godfrey would receive under its standard contingency agreement.

20. The schedule below is a summary reflecting the amount of time spent by the attorneys and professional support staff of Susman Godfrey who were involved in this litigation, and the lodestar calculation based on Susman Godfrey's 2017 billing rates. The following

schedule was prepared from daily time records regularly prepared and maintained by Susman Godfrey LLP, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses is not reflected in the below:

Attorneys	Current Rate	Hours	Value
Chen, Geng (Associate)	\$325	407.3	\$132,372.50
Morrissey, Stephen E. (Partner)	\$750	194.3	\$145,725.00
Pachman, Krysta K. (Associate)	\$400	536.7	\$214,680.00
Seltzer, Marc M. (Partner)	\$1200	4.7	\$5,640.00
Sklaver, Steven G. (Partner)	\$750	438.5	\$328,875.00
Srinivasan, Kalpana (Partner)	\$625	401	\$250,625.00
Paralegals, Legal Assistants, and Summer Associates	Current Rate	Hours	Value
Bruton, Rhonda	\$270	112.6	\$34,101.00
DeGeorges, Simon	\$270	1.0	\$270.00
Fisher, Matthew	\$125	38.3	\$4,787.50
Henry, Christopher	\$125	18.5	\$2,312.50
Tan, Joel	\$270	42.6	\$11,502.00
Upshaw, Maggie	\$125	11.2	\$1,400.00
Webb, David	\$125	9.3	\$1,162.50
TOTALS		2229.7	\$1,133,453.00

21. The total number of hours expended on this litigation by Susman Godfrey's attorneys and paralegals is 2,229.7 hours through November 9, 2017. The total lodestar value of

Susman Godfrey's professional services, derived by multiplying each professional's hours by his or her current hourly rates, is \$1,133,453.00 through November 9, 2017. All time spent litigating this matter was reasonably necessary and appropriate to prosecute the action, and the results achieved further confirm that the time spent on the case was proportionate to the amounts at stake.

22. The hourly rates for Susman Godfrey L.L.P.'s attorneys and professional support staff are the firm's standard hourly rates for 2017. The hourly rates of Susman Godfrey attorneys who billed more than 15 hours on this case range from \$325 to \$700 and the hourly rates of paralegals who billed more than 15 hours on this case range from \$125 to \$270.

23. As detailed and categorized in the below schedule, Susman Godfrey L.L.P. has advanced a total of \$625,961.97 in un-reimbursed expenses in connection with the prosecution of this litigation. These expenses were reasonably necessary to the prosecution of this action, and are of the type that Susman Godfrey L.L.P. normally incurs in litigation. The following schedule was prepared from accounting records regularly prepared and maintained by Susman Godfrey L.L.P., which are available at the request of the Court.

Expense Categories	Cumulative Expenses
B/W Photocopies	\$187.10
B/W Prints	\$1,121.80
Color Photocopies	\$106.00
Color Prints	\$2,679.00
Computer Supplies	\$23.10
Court Document Alerts	\$552.70

Expense Categories	Cumulative Expenses
Expert Fees	\$525,771.22
Filing Fees	\$1,234.00
Ground Transportation (taxi, rental, car service)	\$277.01
Hotel & Travel Expenses	\$14,781.64
Meals	\$5.97
Mediation Fees and Expenses	\$32,075.00
Messenger/Delivery Services	\$2,418.47
Miscellaneous Client Charges	\$921.84
Online Research Services	\$11.74
Parking	\$53.11
Research charges	\$22,273.59
Secretarial Overtime	\$965.00
Telephone & Calling Card Expenses	\$516.82
TOTAL EXPENSES	\$625,961.97

25. The schedule below is a summary reflecting the amount of time spent by the attorneys and professional support staff of Gradstein & Marzano P.C. who were involved in this litigation, and the lodestar calculation based on Gradstein & Marzano P.C.'s 2017 billing rates. The following schedule was prepared from daily time records regularly prepared and maintained by Gradstein & Marzano P.C., which are available at the request of the Court. Time

expended in preparing this application for fees and reimbursement of expenses is not reflected in the below:

Attorneys	Current Rate	Hours	Value
Geller, Harvey	\$700	44.7	\$31,290.00
Gradstein, Henry	\$750	398.9	\$299,175.00
Lifschitz, Daniel	\$350	80.5	\$28,175.00
Marzano, Maryann (Partner)	\$750	696.7	\$522,675.00
Slater, Matthew (Associate)	\$450	24.9	\$11,205
TOTALS		1245.7	\$895,520.00

24. The total number of hours expended on this litigation by Gradstein & Marzano P.C.'s attorneys 1,245.7 hours through November 9, 2017. The total lodestar value of Gradstein & Marzano P.C.'s professional services, derived by multiplying each professional's hours by his or her current hourly rates, is \$895,520.00 through November 9, 2017. All time spent litigating this matter was reasonably necessary and appropriate to prosecute the action, and the results achieved further confirm that the time spent on the case was proportionate to the amounts at stake.

25. The hourly rates for Gradstein & Marzano P.C.'s attorneys and professional support staff are the firm's standard hourly rates for 2017. The hourly rates of Class Counsel's attorneys who billed more than 15 hours on this case range from \$350 to \$750.

26. As detailed and categorized in the below schedule, Gradstein & Marzano P.C. has advanced a total of \$6,149.95 in un-reimbursed expenses in connection with the prosecution of this litigation. These expenses were reasonably necessary to the prosecution of this action, and

are of the type that Gradstein & Marzano P.C. normally incurs in litigation. The following schedule was prepared from accounting records regularly prepared and maintained by Gradstein & Marzano P.C., which are available at the request of the Court.

Expense Categories	Cumulative Expenses
Photocopies	\$1,291.22
Filing Fees	\$1204
Ground Transportation (taxi, rental, car service)	\$318.69
Hotel & Travel Expenses	\$713.80
Meals	\$373.56
Messenger/Delivery Services	\$429.40
Mileage	\$147.53
Parking	\$184.00
Research charges	\$1,012.75
Secretarial overtime	\$475
TOTAL EXPENSES	\$6,149.95

27. Class Counsel will expend more time and incur more expenses preparing for the final approval hearing, handling claims administration issues, responding to Class Member inquiries, and working with Spotify to implement the nonmonetary provisions of the Settlement Agreement.

28. Class Plaintiffs have generously contributed their time for the benefit of the Class and, in the opinion of Counsel, are deserving of the requested incentive award. Their extensive participation included reviewing pleadings, preparing declarations, participating in interviews

with Class Counsel, searching for documents, attending in-person meetings with counsel, participating in telephone conversations, and offering invaluable input based on their experience in the music industry. All three Class Plaintiffs also evaluated and approved the final settlement. Furthermore, all Class Plaintiffs incurred risk by challenging Spotify, including the risk that their music would no longer be streamed on Spotify's service. As detailed in the Declaration of Clara Perez, at least one Class Plaintiff's works were removed from Spotify's service during the course of the litigation. *See* Declaration of Clara Perez ¶ 13, Dkt. No. 94-1.

29. Attached as Exhibit 1 is a true and correct copy of a 2012 National Law Journal Billing Survey and a 2014 article from the National Law Journal on billing rates.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: November 13, 2017

/s/ Steven G. Sklaver

Steven G. Sklaver

EXHIBIT 1

METHODOLOGY

The National Law Journal's survey of billing rates of the largest U.S. law firms provides the High and Low rates for partners and associates.

Starting in 2007, associate class billing data was added to the report from those firms that establish rates based on associate class. The survey results also include:

- High and low partner principal billing rates
- High and low associate principal billing rates
- Firm billing alternatives
- Associate & Partner billing averages and medians
- Firm wide billing averages and medians
- Methodology/Sources:

The National Law Journal asked respondents to its annual survey of the nation's largest law firms (the NLJ 250) to provide a range of hourly billing rates for partners and associates. The firms that supplied this information—including some firms not in the NLJ 250*—are listed below. Firms were also asked to provide average and median billing rates. The data includes total number of attorneys at the firm, and the city of the firm's principal or largest office.

The associate class chart includes a sampling of hourly rates charged by law firms that establish billing rates based on associate class.

Data for variations and alternatives to hourly billing rates is included where provided by responding firms. Firms were asked to differentiate between variations on the traditional billable hour (e.g., discounted and blended hourly rates) and true alternatives to the billable hour (e.g., fixed or flat fees, contingency fees, hybrid fees and retrospective fees based on value). The percentages given denote the estimated portions of the firms' revenues obtained through each of these two categories.

* Not all firms opt to report billing information



Copyright © ALM Media Properties, LLC. All rights reserved.

2012 NLJ Billing Survey

Year	Firm	City	Count	Firmwide Billing Rate Med	Partner Billing Rate Med	Associate Billing Rate Med													
2012	Adams and Reese	New Orleans	267	\$595.00	\$320.00	\$275.00	\$375.00	\$305.00	\$175.00	\$250.00	2012 NLJ Billing Survey								
2012	Best Best & Krieger	Riverside, CA	191	\$625.00	\$390.00	\$310.00	\$435.00	\$390.00	\$225.00	\$250.00	2012 NLJ Billing Survey								
2012	Brinks Hofer Gilson & Lione	Chicago	135	\$835.00	\$385.00	\$325.00	\$560.00	\$460.00	\$190.00	\$325.00	2012 NLJ Billing Survey								
2012	Bryan Cave	St. Louis	884	\$795.00	\$480.00	\$390.00	\$553.00	\$550.00	\$200.00	\$373.00	2012 NLJ Billing Survey								
2012	Butzel Long	Detroit	140	\$750.00	\$313.00	\$290.00	\$363.00	\$425.00	\$210.00	\$234.00	2012 NLJ Billing Survey								
2012	Cozen O'Connor	Philadelphia	503	\$970.00	\$440.00	\$320.00	\$513.00	\$575.00	\$235.00	\$345.00	2012 NLJ Billing Survey								
2012	Dickinson Wright	Detroit	254	\$585.00	\$285.00	\$205.00		\$280.00	\$205.00		2012 NLJ Billing Survey								

2012	Dickstein Shapiro	Washington	343	\$1250.00	\$210.00	\$580.00	\$1250.00	\$560.00	\$700.00	\$570.00	\$235.00	\$460.00	2012 NLJ Billing Survey
2012	Dinsmore & Shohl	Cincinnati	412	\$650.00	\$130.00	\$310.00	\$650.00	\$180.00	\$380.00	\$325.00	\$130.00	\$225.00	2012 NLJ Billing Survey
2012	DLA Piper	New York	3746	\$1200.00	\$105.00	\$635.00	\$1200.00	\$550.00	\$775.00	\$760.00	\$335.00	\$530.00	2012 NLJ Billing Survey
2012	Dorsey & Whitney	Minneapolis	531	\$635.00	\$200.00	\$410.00	\$635.00	\$305.00	\$525.00	\$420.00	\$200.00	\$275.00	2012 NLJ Billing Survey
2012	Dykema Gossett	Chicago	331	\$685.00	\$130.00	\$415.00	\$675.00	\$395.00	\$505.00	\$465.00	\$235.00	\$305.00	2012 NLJ Billing Survey
2012	Epstein Becker & Green	New York	275	\$750.00	\$215.00	\$435.00	\$750.00	\$330.00	\$535.00	\$455.00	\$215.00	\$330.00	2012 NLJ Billing Survey
2012	Fisher & Phillips	Atlanta	237	\$565.00	\$215.00	\$410.00	\$565.00	\$350.00	\$430.00	\$395.00	\$215.00	\$305.00	2012 NLJ Billing Survey
2012	Foley & Lardner	Milwaukee	874	\$875.00	\$200.00	\$495.00	\$875.00	\$390.00	\$570.00	\$605.00	\$200.00	\$370.00	2012 NLJ Billing Survey
2012	Fox Rothschild	Philadelphia	471	\$795.00	\$200.00	\$435.00	\$760.00	\$340.00	\$500.00	\$480.00	\$200.00	\$310.00	2012 NLJ Billing Survey
2012	Frost Brown Todd	Cincinnati	393	\$525.00	\$150.00	\$295.00	\$525.00	\$205.00	\$350.00	\$275.00	\$150.00	\$205.00	2012 NLJ Billing Survey
2012	Gardere Wynne Sewell	Dallas	242	\$795.00	\$230.00	\$485.00	\$795.00	\$395.00	\$565.00	\$525.00	\$235.00	\$350.00	2012 NLJ Billing Survey
2012	Gibbons	Newark, NJ	200	\$815.00	\$285.00	\$450.00	\$815.00	\$395.00	\$500.00	\$450.00	\$285.00	\$320.00	2012 NLJ Billing Survey
2012	Harris Beach	Rochester, NY	189	\$625.00	\$175.00	\$350.00	\$625.00	\$285.00	\$400.00	\$350.00	\$175.00	\$250.00	2012 NLJ Billing Survey

2012	Hiscock & Barclay	Syracuse, NY	165	\$650.00	\$175.00	\$361.00	\$650.00	\$235.00	\$441.00	\$275.00	\$175.00	\$225.00	2012 NLJ Billing Survey
2012	Hogan Lovells	Washington	2253	\$1200.00	\$230.00	\$625.00	\$1200.00	\$545.00	\$750.00	\$655.00	\$310.00	\$465.00	2012 NLJ Billing Survey
2012	Holland & Hart	Denver	394	\$695.00	\$180.00	\$360.00	\$695.00	\$275.00	\$420.00	\$400.00	\$180.00	\$268.00	2012 NLJ Billing Survey
2012	Holland & Knight	Washington	908	\$985.00	\$200.00	\$490.00	\$985.00	\$315.00	\$560.00	\$575.00	\$200.00	\$310.00	2012 NLJ Billing Survey
2012	Husch Blackwell	St. Louis	520	\$890.00	\$185.00	\$355.00	\$890.00	\$240.00	\$405.00	\$445.00	\$185.00	\$235.00	2012 NLJ Billing Survey
2012	Kelley Dye & Warren	New York	303	\$950.00	\$285.00	\$550.00	\$950.00	\$450.00	\$660.00	\$600.00	\$285.00	\$450.00	2012 NLJ Billing Survey
2012	Knobbe Martens Olson & Bear	Irvine, CA	265	\$760.00	\$120.00	\$380.00	\$760.00	\$425.00	\$525.00	\$420.00	\$295.00	\$330.00	2012 NLJ Billing Survey
2012	Lathrop & Gage	Kansas City, MO	290	\$595.00	\$175.00	\$355.00	\$595.00	\$285.00	\$410.00	\$385.00	\$205.00	\$245.00	2012 NLJ Billing Survey
2012	Lewis and Roca	Phoenix	183	\$725.00	\$225.00	\$470.00	\$725.00	\$410.00	\$520.00	\$450.00	\$225.00	\$330.00	2012 NLJ Billing Survey
2012	Locke Lord	Dallas	540	\$1285.00	\$265.00	\$560.00	\$1285.00	\$455.00	\$655.00	\$600.00	\$265.00	\$400.00	2012 NLJ Billing Survey
2012	McAfee & Taft	Oklahoma City	183	\$500.00	\$165.00	\$335.00	\$500.00	\$250.00	\$375.00	\$265.00	\$165.00	\$215.00	2012 NLJ Billing Survey
2012	McDonald Hopkins	Cleveland	128	\$600.00	\$185.00	\$380.00	\$595.00	\$310.00	\$440.00	\$370.00	\$185.00	\$270.00	2012 NLJ Billing Survey
2012	McElroy, Deutsch, Mulvaney & Carpenter	Morristown, NJ	286	\$575.00	\$190.00	\$300.00	\$575.00	\$300.00	\$385.00	\$325.00	\$190.00	\$255.00	2012 NLJ Billing Survey

2012 McKenna Long & Aldridge	Atlanta	424	\$830.00	\$215.00	\$455.00	\$830.00	\$375.00	\$550.00	\$560.00	\$215.00	\$395.00	2012 NLJ Billing Survey
2012 Michael Best & Friedrich	Milwaukee	196	\$650.00	\$210.00	\$380.00	\$650.00	\$245.00	\$425.00	\$350.00	\$210.00	\$265.00	2012 NLJ Billing Survey
2012 Miles & Stockbridge	Baltimore	213	\$700.00	\$230.00	\$405.00	\$700.00	\$320.00	\$460.00	\$350.00	\$230.00	\$300.00	2012 NLJ Billing Survey
2012 Miller & Martin	Chattanooga, TN	169	\$630.00	\$180.00	\$340.00	\$630.00	\$250.00	\$385.00	\$285.00	\$185.00	\$225.00	2012 NLJ Billing Survey
2012 Nelson Mullins Riley & Scarborough	Columbia, SC	414	\$850.00	\$80.00	\$330.00	\$850.00	\$230.00	\$420.00	\$370.00	\$160.00	\$258.00	2012 NLJ Billing Survey
2012 Patton Boggs	Washington	491	\$990.00	\$170.00	\$550.00	\$990.00	\$425.00	\$665.00	\$570.00	\$240.00	\$435.00	2012 NLJ Billing Survey
2012 Perkins Coie	Seattle	747	\$910.00	\$220.00	\$485.00	\$910.00	\$290.00	\$560.00	\$605.00	\$220.00	\$365.00	2012 NLJ Billing Survey
2012 Polsinelli Shughart	Kansas City, MO	503	\$650.00	\$210.00	\$350.00	\$650.00	\$300.00	\$390.00	\$325.00	\$210.00	\$260.00	2012 NLJ Billing Survey
2012 Rutan & Tucker	Costa Mesa, CA	144	\$650.00	\$200.00		\$650.00	\$340.00		\$425.00	\$200.00		2012 NLJ Billing Survey
2012 Saul Ewing	Philadelphia	219	\$800.00	\$225.00	\$450.00	\$800.00	\$335.00	\$500.00	\$510.00	\$225.00	\$310.00	2012 NLJ Billing Survey
2012 Schulte Roth & Zabel	New York	371	\$995.00	\$125.00	\$605.00	\$995.00	\$785.00	\$895.00	\$705.00	\$295.00	\$585.00	2012 NLJ Billing Survey
2012 Sedgwick	San Francisco	343	\$420.00	\$157.00	\$299.00	\$587.00	\$189.00	\$361.00	\$420.00	\$157.00	\$260.00	2012 NLJ Billing Survey
2012 Shumaker, Loop & Kendrick	Toledo, OH	219	\$570.00	\$180.00	\$375.00	\$570.00	\$280.00	\$390.00	\$325.00	\$210.00	\$255.00	2012 NLJ Billing Survey

2012	Shutts & Bowen	Miami	212	\$635.00	\$190.00	\$380.00	\$635.00	\$250.00	\$415.00	\$370.00	\$190.00	\$263.00	2012 NLJ Billing Survey
2012	Stoel Rives	Portland, OR	374	\$655.00	\$200.00	\$400.00	\$655.00	\$300.00	\$463.00	\$435.00	\$200.00	\$276.00	2012 NLJ Billing Survey
2012	Strasburger & Price	Dallas	212	\$649.36	\$189.65	\$397.00	\$649.00	\$213.00	\$402.00	\$385.00	\$190.00	\$243.00	2012 NLJ Billing Survey
2012	Sullivan & Worcester	Boston	144	\$900.00	\$320.00	\$570.00	\$900.00	\$500.00	\$670.00	\$540.00	\$320.00	\$430.00	2012 NLJ Billing Survey
2012	Thompson & Knight	Dallas	291	\$900.00	\$260.00	\$530.00	\$900.00	\$440.00	\$595.00	\$480.00	\$260.00	\$365.00	2012 NLJ Billing Survey
2012	Thompson Coburn	St. Louis	309	\$750.00	\$200.00		\$750.00	\$330.00		\$460.00	\$200.00		2012 NLJ Billing Survey
2012	Ulmer & Berne	Cleveland, OH	178	\$615.00	\$195.00	\$350.00	\$615.00	\$265.00	\$420.00	\$395.00	\$195.00	\$295.00	2012 NLJ Billing Survey
2012	Winstead	Dallas	258	\$645.00	\$215.00	\$410.00	\$645.00	\$375.00	\$475.00	\$425.00	\$215.00	\$320.00	2012 NLJ Billing Survey

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow. The National Law Journal January 13, 2014 Monday

Copyright 2014 ALM Media Properties, LLC
All Rights Reserved
Further duplication without permission is prohibited

THE NATIONAL
LAW JOURNAL

The National Law Journal

January 13, 2014 Monday

SECTION: NLJ'S BILLING SURVEY; Pg. 1 Vol. 36 No. 20

LENGTH: 1860 words

HEADLINE: \$1,000 Per Hour **Isn't Rare Anymore;**
Nominal billing levels rise, but discounts ease blow.

BYLINE: KAREN SLOAN

BODY:

As recently as five years ago, law partners charging \$1,000 an hour were outliers. Today, four-figure hourly rates for indemand partners at the most prestigious firms don't raise eyebrows-and a few top earners are closing in on \$2,000 an hour.

These rate increases come despite hand-wringing over price pressures from clients amid a tough economy. But everrising standard billing rates also obscure the growing practice of discounts, falling collection rates, and slow march toward alternative fee arrangements.

Nearly 20 percent of the firms included in The National Law Journal's annual survey of large law firm billing rates this year had at least one partner charging more than \$1,000 an hour. Gibson, Dunn & Crutcher partner Theodore Olson had the highest rate recorded in our survey, billing \$1,800 per hour while representing mobile satellite service provider LightSquared Inc. in Chapter 11 proceedings.

Of course, few law firm partners claim Olson's star power. His rate in that case is nearly the twice the \$980 per hour average charged by Gibson Dunn partners and three times the average \$604 hourly rate among partners at NLJ 350 firms. Gibson Dunn chairman and managing partner Ken Doran said Olson's rate is "substantially" above that of other partners at the firm, and that the firm's standard rates are in line with its peers.

"While the majority of Ted Olson's work is done under alternative billing arrangements, his hourly rate reflects his stature in the legal community, the high demand for his services and the unique value that he offers to clients given his extraordinary experience as a former solicitor general of the United States who has argued more than 60 cases before the U.S. Supreme Court and has counseled several presidents," Doran said.

In reviewing billing data this year, we took a new approach, asking each firm on the NLJ 350-our survey of the nation's 350 largest firms by attorney headcount-to provide their highest, lowest and average billing rates for associates and partners. We supplemented those data through public records. All together, this year's survey includes information for 159 of the country's largest law firms and reflects billing rates as of October.

The figures show that, even in a down economy, hiring a large law firm remains a pricey prospect. The median among the highest partner billing rates reported at each firm is \$775 an hour, while the median low partner rate is \$405. For associates, the median high stands at \$510 and the low at \$235. The average associate rate is \$370.

Multiple industry studies show that law firm billing rates continued to climb during 2013 despite efforts by corporate counsel to rein them in. TyMetrix's 2013 Real Rate Report Snapshot found that the average law firm billing rate increased by 4.8 percent compared with 2012. Similarly, the Center for the Study of the Legal Profession at the Georgetown University Law Center and Thomson Reuters Peer Monitor found that law firms increased their rates by an average 3.5 percent during 2013.

Of course, rates charged by firms on paper don't necessarily reflect what clients actually pay. Billing realization rates-which reflect the percentage of work billed at firms' standard rates- have fallen from 89 percent in 2010 to nearly 87 percent in 2013 on average, according to the Georgetown study. When accounting for billed hours actually collected by firms, the realization rate falls to 83.5 percent.

"What this means, of course, is that- on average-law firms are collecting only 83.5 cents for every \$1.00 of standard time they record," the Georgetown report reads. "To understand the full impact, one need only consider that at the end of 2007, the collected realization rate was at the 92 percent level."

In other words, law firms set rates with the understanding that they aren't likely to collect the full amount, said Mark Medice, who oversees the Peer Monitor Index. That index gauges the strength of the legal market according to economic indicators including demand for legal services, productivity, rates and expenses. "Firms start out with the idea of, 'I want to achieve a certain rate, but it's likely that my client will ask for discounts whether or not I increase my rate,'" Medice said.

Indeed, firms bill nearly all hourly work at discounts ranging from 5 percent to 20 percent off standard rates, said Peter Zeughauser, a consultant with the Zeughauser Group. Discounts can run as high as 50 percent for matters billed under a hybrid system, wherein a law firm can earn a premium for keeping costs under a set level or for obtaining a certain outcome, he added. "Most firms have gone to a two-tier system, with what is essentially an aspirational rate that they occasionally get and a lower rate that they actually budget for," he said.

Most of the discounting happens at the front end, when firms and clients negotiate rates, Medice said. But additional discounting happens at the billing and collections stages. Handling alternative fee arrangements and discounts has become so complex that more than half of the law firms on the Am Law 100-NLJ affiliate The American Lawyer's ranking of firms by gross revenue-have created new positions for pricing directors, Zeughauser said.

THE ROLE OF GEOGRAPHY

Unsurprisingly, rates vary by location. Firms with their largest office in New York had the highest average partner and associate billing rates, at \$882 and \$520, respectively. Similarly, TyMetrix has reported that more than 25 percent of partners at large New York firms charge \$1,000 per

hour or more for contracts and commercial work.

Washington was the next priciest city on our survey, with partners charging an average \$748 and associates \$429. Partners charge an average \$691 in Chicago and associates \$427. In Los Angeles, partners charge an average \$665 while the average associate rate is \$401.

Pricing also depends heavily on practice area, Zeughauser and Medice said. Bet-the-company patent litigation and white-collar litigation largely remain at premium prices, while practices including labor and employment have come under huge pressure to reduce prices.

"If there was a way for law firms to hold rates, they would do it. They recognize how sensitive clients are to price increases," Zeughauser said. But declining profit margins—due in part to higher technology costs and the expensive lateral hiring market—mean that firms simply lack the option to keep rates flat, he said.

BILLING SURVEY METHODOLOGY

The National Law Journal's survey of billing rates of the largest U.S. law firms provides the high, low and average rates for partners and associates.

The NLJ asked respondents to its annual survey of the nation's largest law firms (the NLJ 350) to provide a range of hourly billing rates for partners and associates as of October 2013.

For firms that did not supply data to us, in many cases we were able to supplement billing-rate data derived from public records.

In total, we have rates for 159 of the nation's 350 largest firms.

Rates data include averages, highs and low rates for partners and associates. Information also includes the average full-time equivalent (FTE) attorneys at the firm and the city of the firm's principal or largest office.

We used these data to calculate averages for the nation as a whole and for selected cities.

Billing Rates at the Country's Priciest Law Firms

Here are the 50 firms that charge the highest average hourly rates for partners.

Billing Rates at the Country's Priciest Law Firms

FIRM NAME	LARGEST U.S. OFFICE*	AVERAGE FULL-TIME EQUIVALENT ATTORNEYS*	PARTNER HOURLY RATES		ASSOCIATE HOURLY RATES		AVERAGE	HIGH	LOW
			AVERAGE	HIGH	AVERAGE	HIGH			
Debevoise & Plimpton	New York	615	\$1,055	\$1,075	\$955	\$490	\$760	\$120	
Paul, Weiss,	New York	803	\$1,040	\$1,120	\$760	\$600	\$760	\$250	

* Full-time equivalent attorney numbers and the largest U.S. office are from the NLJ 350 published in April 2013. For complete numbers, please see NLJ.com.

** Firm did not exist in this form for the entire year.

Rifkind, Wharton & Garrison									
Skadden, Arps, Slate, Meagher & Flom	New York	1,735	\$1,035	\$1,150	\$845	\$620	\$845	\$340	
Fried, Frank, Harris, Shriver & Jacobson	New York	476	\$1,000	\$1,100	\$930	\$595	\$760	\$375	
Latham & Watkins	New York	2,033	\$990	\$1,110	\$895	\$605	\$725	\$465	
Gibson, Dunn & Crutcher	New York	1,086	\$980	\$1,800	\$765	\$590	\$930	\$175	
Davis Polk & Wardwell	New York	787	\$975	\$985	\$850	\$615	\$975	\$130	
Willkie Farr & Gallagher	New York	540	\$950	\$1,090	\$790	\$580	\$790	\$350	
Cadwalader, Wickersham & Taft	New York	435	\$930	\$1,050	\$800	\$605	\$750	\$395	
Weil, Gotshal & Manges	New York	1,201	\$930	\$1,075	\$625	\$600	\$790	\$300	
Quinn Emanuel Urquhart & Sullivan	New York	697	\$915	\$1,075	\$810	\$410	\$675	\$320	
Wilmer Cutler Pickering Hale and Dorr	Washington	961	\$905	\$1,250	\$735	\$290	\$695	\$75	
Dechert	New York	803	\$900	\$1,095	\$670	\$530	\$735	\$395	
Andrews Kurth	Houston	348	\$890	\$1,090	\$745	\$528	\$785	\$265	
Hughes Hubbard & Reed	New York	344	\$890	\$995	\$725	\$555	\$675	\$365	
Irell & Manella	Los Angeles	164	\$890	\$975	\$800	\$535	\$750	\$395	
Proskauer Rose	New York	746	\$880	\$950	\$725	\$465	\$675	\$295	
White & Case	New York	1,900	\$875	\$1,050	\$700	\$525	\$1,050	\$220	
Morrison & Foerster	San Francisco	1,010	\$865	\$1,195	\$595	\$525	\$725	\$230	
Pillsbury Winthrop Shaw Pittman	Washington	609	\$865	\$1,070	\$615	\$520	\$860	\$375	
Kaye Scholer	New York	414	\$860	\$1,080	\$715	\$510	\$680	\$320	
Kramer Levin Naftalis & Frankel	New York	320	\$845	\$1,025	\$740	\$590	\$750	\$400	
Hogan Lovells	Washington	2,280	\$835	\$1,000	\$705	-	-	-	

Kasowitz, Benson, Torres & Friedman	New York	365	\$835	\$1,195	\$600	\$340	\$625	\$200
Kirkland & Ellis	Chicago	1,517	\$825	\$995	\$590	\$540	\$715	\$235
Cooley	Palo Alto	632	\$820	\$990	\$660	\$525	\$630	\$160
Arnold & Porter	Washington	748	\$815	\$950	\$670	\$500	\$610	\$345
Paul Hastings	New York	899	\$815	\$900	\$750	\$540	\$755	\$335
Curtis, Mallet- Prevost, Colt & Mosle	New York	322	\$800	\$860	\$730	\$480	\$785	\$345
Winston & Strawn	Chicago	842	\$800	\$995	\$650	\$520	\$590	\$425
Bingham McCutchen	Boston	900	\$795	\$1,080	\$220	\$450	\$605	\$185
Akin Gump Strauss Hauer & Feld	Washington	806	\$785	\$1,220	\$615	\$525	\$660	\$365
Covington & Burling	Washington	738	\$780	\$890	\$605	\$415	\$565	\$320
King & Spalding	Atlanta	838	\$775	\$995	\$545	\$460	\$735	\$125
Norton Rose Fulbright	N/A**	N/A**	\$775	\$900	\$525	\$400	\$515	\$300
DLA Piper	New York	4,036	\$765	\$1,025	\$450	\$510	\$750	\$250
Bracewell & Giuliani	Houston	432	\$760	\$1,125	\$575	\$440	\$700	\$275
Baker & McKenzie	Chicago	4,004	\$755	\$1,130	\$260	\$395	\$925	\$100
Dickstein Shapiro	Washington	308	\$750	\$1,250	\$590	\$475	\$585	\$310
Jenner & Block	Chicago	432	\$745	\$925	\$565	\$465	\$550	\$380
Jones Day	New York	2,363	\$745	\$975	\$445	\$435	\$775	\$205
Manatt, Phelps & Phillips	Los Angeles	325	\$740	\$795	\$640	-	-	-
Seward & Kissel	New York	152	\$735	\$850	\$625	\$400	\$600	\$290
O'Melveny & Myers	Los Angeles	738	\$715	\$950	\$615	-	-	-
McDermott Will & Emery	Chicago	1,024	\$710	\$835	\$525	-	-	-
Reed Smith	Pittsburgh	1,468	\$710	\$945	\$545	\$420	\$530	\$295
Dentons	N/A**	N/A**	\$700	\$1,050	\$345	\$425	\$685	\$210
Jeffer Mangels Butler & Mitchell	Los Angeles	126	\$690	\$875	\$560	-	-	-
Sheppard,	Los	521	\$685	\$875	\$490	\$415	\$535	\$275

Mullin, Richter Angeles
& Hampton

Alston & Bird	Atlanta	805	\$675	\$875	\$495	\$425	\$575	\$280
---------------	---------	-----	-------	-------	-------	-------	-------	-------

THE FOUR-FIGURE CLUB

These 10 firms posted the highest partner billing rates.

THE FOUR-FIGURE CLUB

Gibson, Dunn & Crutcher	\$1,800
Dickstein Shapiro	\$1,250
Wilmer Cutler Pickering Hale and Dorr	\$1,250
Akin Gump Strauss Hauer & Feld	\$1,220
Kasowitz, Benson, Torres & Friedman	\$1,195
Morrison & Foerster	\$1,195
Skadden, Arps, Slate, Meagher & Flom	\$1,150
Baker & McKenzie	\$1,130
Bracewell & Giuliani	\$1,125
Paul, Weiss, Rifkind, Wharton & Garrison	\$1,120

Contact Karen Sloan at ksloan@alm.com

LOAD-DATE: January 13, 2014

Source: [Legal > / ... / > The National Law Journal](#) 

Terms: **"isn't rare anymore"** (Suggest Terms for My Search)

View: Full

Date/Time: Friday, August 15, 2014 - 6:12 PM EDT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 13, 2017, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's SDNY Procedures for Electronic Filing.

/s/ Steven G. Sklaver
Steven G. Sklaver